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Attorneys for Complainant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JEROLD J. WERNER
a.k.a., JEROLD JAMES WERNER
2501 E. Chapman, #100
Fullerton, CA 92831

and

California Men's Colony West
P.O. Box 8103
San Luis Obispo, CA 93409

Certified Public Accountant License No.
18486

Respondent.

Case No. AC-2004-18

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 8, 2004, Complainant Carol Sigmann, in her official capacity as the Executive Officer of the California Board of Accountancy (Board), Department of Consumer Affairs, filed Accusation No. AC-2004-18 against Jerold J. Werner, a.k.a. Jerold James Werner (Respondent), before the Board.

2. On or about January 26, 1973, the Board issued Certified Public Accountant Certificate No. 18486 to Respondent. The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2004, unless renewed.

1 3. On or about June 16, 2004, Henrietta Gaviola, an employee of the
2 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
3 AC-2004-18, Statement to Respondent, Notice of Defense, Request for Discovery, and
4 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record
5 with the Board, which was and is 2501 E. Chapman, #100, Fullerton, CA 92831. On or about
6 June 16, 2004, the Accusation and supporting documents were also served by Certified and First
7 Class Mail on Respondent at California Men's Colony West, P.O. Box 8103, San Luis Obispo,
8 CA 93409. A copy of the Accusation is attached as exhibit A and incorporated herein by
9 reference.

10 4. Service of the Accusation was effective as a matter of law under the
11 provisions of Government Code section 11505, subdivision (c).

12 5. On or about June 21, 2004, the aforementioned documents were returned
13 by the U.S. Postal Service marked "Not Deliverable As Addressed Unable to Forward." The
14 postal return documents are incorporated herein by reference.

15 6. Government Code section 11506 states, in pertinent part:

16 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
17 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
18 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
19 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

20 7. Respondent failed to file a Notice of Defense within 15 days after service
21 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
22 Accusation No. AC-2004-18.

23 8. California Government Code section 11520 states, in pertinent part:

24 "(a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions or upon
26 other evidence and affidavits may be used as evidence without any notice to respondent."

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1 9. Pursuant to its authority under Government Code section 11520, the Board
2 finds Respondent is in default. The Board will take action without further hearing and, based on
3 Respondent's express admissions by way of default and the evidence before it, finds that the
4 allegations in Accusation No. AC-2004-18 are true.

5 10. The total costs for investigation and enforcement are \$2,047.27.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Jerold J. Werner,
8 a.k.a. Jerold James Werner, has subjected his Certified Public Accountant Certificate (No.
9 18486) to discipline.

10 2. A copy of the Accusation is attached.

11 3. The agency has jurisdiction to adjudicate this case by default.

12 4. The California Board of Accountancy is authorized to revoke Respondent's
13 Certified Public Accountant Certificate based upon the following violations alleged in the
14 Accusation:

15 a. Business and Professions Code sections 5100, subdivision (a), and
16 5106 - conviction of a substantially related crime.

17 b. Business and Professions Code sections 5100 and 5063,
18 subdivision (a)(1)(A), (B), and (C) - failure to report conviction to Board.

19 c. Business and Professions Code section 5100, subdivisions (c), (g)
20 and (k) - commission of a dishonest act- grand theft.

21 ORDER

22 IT IS SO ORDERED that Certified Public Accountant Certificate No. 18486,
23 heretofore issued to Respondent Jerold J. Werner, a.k.a. Jerold James Werner, is revoked.

24 Pursuant to Government Code section 11520, subdivision (c), Respondent may
25 serve a written motion requesting that the Decision be vacated and stating the grounds relied
26 upon within seven (7) days after service of the Decision on Respondent.

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The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on October 15, 2004.

It is so ORDERED September 15, 2004

Jim B. Thomas

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

Attachments:

Exhibit A: Accusation No. AC-2004-18

DOJ docket number:03541110-LA2004600140

default.wpd

prepared by shr/tlr

Exhibit A
Accusation No. AC-2004-18

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In the Matter of the Accusation Against:

Case No. AC-2004-18

JEROLD J. WERNER
a.k.a., JEROLD JAMES WERNER
2501 E. Chapman, #100
Fullerton, CA 92831

A C C U S A T I O N

and

California Men's Colony West
P.O. Box 8103
San Luis Obispo, CA 93409

Certified Public Accountant Certificate No.
18486

Respondent.

Complainant alleges:

PARTIES

1. Carol Sigmann (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

2. On or about January 26, 1973, the California Board of Accountancy issued Certified Public Accountant Certificate No. 18486 to Jerold J. Werner, also known as, Jerold James Werner (Respondent). The Certified Public Accountant Certificate was in full force and

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1 effect at all times relevant to the charges brought herein and will expire on October 31, 2004,
2 unless renewed.

3 JURISDICTION

4 3. This accusation is brought before the California Board of Accountancy
5 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated.

7 4. Section 5100 states:

8 "After notice and hearing the board may revoke, suspend, or refuse to renew any
9 permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5
10 (commencing with Section 5080), or may censure the holder of that permit or certificate for
11 unprofessional conduct that includes, but is not limited to, one or any combination of the
12 following causes:

13 "(a) Conviction of any crime substantially related to the qualifications, functions
14 and duties of a certified public accountant or a public accountant.

15

16 "(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in
17 the same or different engagements, for the same or different clients, or any combination of
18 engagements or clients, each resulting in a violation of applicable professional standards that
19 indicate a lack of competency in the practice of public accountancy or in the performance of the
20 bookkeeping operations described in Section 5052.

21

22 "(g) Willful violation of this chapter or any rule or regulation promulgated by the
23 board under the authority granted under this chapter.

24

25 "(k) Embezzlement, theft, misappropriation of funds or property, or obtaining
26 money, property, or other valuable consideration by fraudulent means or false pretenses.

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28 ///

1 5. Section 5063, subdivision (a), states, in pertinent part:

2 "A licensee shall report to the board in writing of the occurrence of any of the
3 following events . . . within 30 days of the date the licensee has knowledge of these events:

4 "(1) The conviction of the licensee of any of the following:

5 "(A) A felony.

6 "(B) Any crime related to the qualifications, functions, or duties of a public
7 accountant or certified public accountant, or to acts or activities in the course and scope of the
8 practice of public accountancy.

9 "(C) Any crime involving theft, embezzlement, misappropriation of funds or
10 property, breach of a fiduciary responsibility, or the preparation, publication, or dissemination of
11 false, fraudulent, or materially misleading financial statements, reports, or information.

12 As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, pleas of
13 no contest, or pronouncement of sentence by a trial court even though that conviction may not be
14 final or sentence actually imposed until appeals are exhausted."

15 6. Section 5106 states:

16 "A plea or verdict of guilty or a conviction following a plea of nolo contendere is
17 deemed to be a conviction within the meaning of this article. The record of the conviction shall be
18 conclusive evidence thereof. The board may order the certificate or permit suspended or revoked,
19 or may decline to issue a certificate or permit, when the time for appeal has elapsed, or the
20 judgment of conviction has been affirmed on appeal or when an order granting probation is made,
21 suspending the imposition of sentence, irrespective of a subsequent order under the provisions of
22 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter
23 a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information
24 or indictment."

25 7. Section 5109 states:

26 "The expiration, cancellation, forfeiture, or suspension of a license by operation of
27 law or by order or decision of the board or a court of law, or the voluntary surrender of a license
28 by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or

1 action or disciplinary proceeding against the licensee, or to render a decision suspending or
2 revoking the license."

3 8. Section 5107, subdivision (a), states:

4 "The executive officer of the board may request the administrative law judge, as
5 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
6 certificate found guilty of unprofessional conduct in violation of subdivision (b), (c), (j), or (k) of
7 Section 5100, or involving a felony conviction in violation of subdivision (a) of Section 5100, or
8 involving fiscal dishonesty in violation of subdivision (i) of Section 5100, to pay to the board all
9 reasonable costs of investigation and prosecution of the case, including, but not limited to,
10 attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

11 FIRST CAUSE FOR DISCIPLINE

12 (Conviction of a Crime)

13 9. Respondent is subject to disciplinary action under section 5100(a), and
14 5106, in that Respondent was convicted of a crime substantially related to the qualifications,
15 functions, or duties of a Certified Public Accountant as follows:

16 A. On or about May 27, 2003, Respondent was convicted on his plea of no
17 contest to one count of violating Penal Code section 487, subdivision (b)(3) (grand theft), a
18 felony, in the Superior Court of California, County of Mono, under Case No. EK4883, entitled
19 *People of the State of California v. Jerold James Werner*.

20 B. The circumstances surrounding the conviction are that on or around
21 September 11, 2002, Respondent, willfully and unlawfully, took personal property of a value
22 exceeding Four Hundred Dollars (\$400) belonging to his employer Russ Norton/Norco
23 Goodyear, to wit: \$336,435.05.

24 SECOND CAUSE FOR DISCIPLINE

25 (Failure to Report to Board)

26 10. Respondent is subject to disciplinary action under sections 5100 and
27 5063(a)(1)(A), (B), and (C), on the grounds of unprofessional conduct, in that Respondent failed
28 to report his conviction to the Board, in writing, within 30 days of the date Respondent had

1 knowledge of the conviction.

2 THIRD CAUSE FOR DISCIPLINE

3 (Unprofessional Conduct)

4 11. Respondent is subject to disciplinary action under sections 5100(c), (g),
5 and (k), on the grounds of unprofessional conduct, in that on or about September 11, 2002,
6 Respondent committed a dishonest act by willfully violating the law as more fully set forth in
7 paragraph 9 above.

8 PRAYER

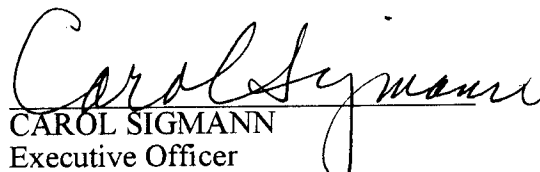
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

11 1. Revoking, suspending, or otherwise imposing discipline upon Certified
12 Public Accountant Certificate No. 18486, issued to Jerold J. Werner, also known as Jerold James
13 Werner;

14 2. Ordering Jerold J. Werner to pay the California Board of Accountancy the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 5107;

17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: June 8, 2004

19
20 
21 CAROL SIGMANN
22 Executive Officer
23 California Board of Accountancy
24 Department of Consumer Affairs
25 State of California
26 Complainant

24 03541110-LA2004600140

25 jz